

70 FR 61253, October 21, 2005

A-427-818  
POR: 2/1/03-1/31/04  
Public Document  
ITA/IA/6: EB-ML

MEMORANDUM TO: Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

FROM: Gary Taverman  
Acting Deputy Assistant Secretary  
for Import Administration

DATE: October 14, 2005

SUBJECT: Amended Final Results of the Administrative Review of the  
Antidumping Duty Order on Low Enriched Uranium from France  
(2003-2004)

RE: Ministerial Error Allegations

#### Summary

Eurodif S.A., Compagnie Generale des Matieres Nucleaires, and COGEMA, Inc. (collectively, Eurodif/COGEMA) and the United States Enrichment Corporation and USEC Inc. (collectively, USEC or the petitioner) each have alleged that the Department of Commerce (the Department) made a ministerial error in the calculation of the dumping margin for the final results of review. We agree with Eurodif/COGEMA that a ministerial error was made with regard to the calculation of constructed value (CV) profit and recommend correcting it. Further, we disagree with petitioner that a ministerial error was made in the calculation of the research and development (R&D) adjustment.

#### Background

The Department published the final results of administrative review on September 14, 2005. See Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France, 70 FR 54359. On September 14, 2005, Eurodif/COGEMA and the petitioner each timely filed, pursuant to 19 CFR 351.224(c)(2), allegations that the Department made ministerial errors in its final results of this review. Rebuttals were filed on September 19, 2005.

## Analysis of Alleged Ministerial Errors

### Applicable Regulations

The guidelines for the correction of ministerial errors in the final results of an administrative review are contained in section 351.224 of the Department's regulations. Specifically, sub-section 351.224(f) defines a ministerial error as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial."

#### **Comment 1:** Alleged Error in the Calculation of CV Profit

Eurodif/COGEMA states that in the margin program the Department applied the CV profit rate to a cost of production (COP) that included electricity adjustments and imputed R&D expenses. However, Eurodif/COGEMA's parent company AREVA's front-end division financial statements, which were used to calculate the rate, did not include any imputed electricity or R&D expenses. Furthermore, according to Eurodif/COGEMA, the methodology applied in the calculations is not consistent with the Department's analysis memorandum for the final results of review, which indicates that the Department intended to calculate profit based on the COP exclusive of the electricity adjustments and the imputed R&D expenses. See Memorandum for the File through Dana Mermelstein from Myrna Lobo and Elfi Blum: Analysis for Eurodif/COGEMA for the Final Results of the Second Administrative Review of Low Enriched Uranium (LEU) from France, at Attachment 4 (September 6, 2005) (Final Analysis Memorandum), on file in the Central Records Unit, room B-099 of the main Department building.

In its September 19, 2005, reply to Eurodif/COGEMA's ministerial error allegation, petitioner agrees that the Department's Final Analysis Memorandum does not accurately reflect the calculation in the margin program, but objects to respondent's interpretation of the Department's intentions. Petitioner argues that the calculation in the margin program is consistent with the Department's practice to calculate CV profit. As such, petitioner argues that the margin program should not be altered.

**Department's Position:** We agree with Eurodif/COGEMA that this is a ministerial error that should be corrected in accordance with section 351.224(e) of the Department's regulations. The Department has applied the CV profit rate to the COP net of any adjustments to electricity and R&D in this amended final results. Furthermore, we note that in the margin program, the Department correctly calculated CV profit inclusive of selling, general and administrative (SG&A) expenses, interest, and packing, whereas, in Attachment 4 of the Final Analysis Memorandum, the Department inadvertently omitted those expenses. Because it is the Department's practice to calculate CV profit based on the cost of manufacture (COM), plus SG&A and interest and packing, we recalculated CV profit in Attachment 4 of the Final Analysis Memorandum to include those expenses. See Memorandum for the File through Dana

Mermelstein from Myrna Lobo and Elfi Blum: Analysis for Eurodif/COGEMA for the Amended Final Results of the Second Administrative Review of Low Enriched Uranium (LEU) from France, at Attachment 1 (October 14, 2005).

**Comment 2:** Calculation of R&D Expenses Related to Centrifuge Technology

Petitioner alleges in its September 14, 2005, filing that the Department made a ministerial error by applying the R&D adjustment factor to respondent's COM, unadjusted for the major input electricity adjustment. Petitioner claims that USEC's financial statements include the full cost of electricity incurred by USEC to produce LEU. Petitioner argues that, since the Department found that respondent's production costs understated the actual cost of electricity incurred by respondent, the Department should include the major input electricity adjustment when applying the R&D factor. In addition, petitioner claims that, in calculating the R&D adjustment factor, the Department inadvertently used a weighted average of USEC's 2000 through 2004 R&D expense ratios rather than a simple average as indicated in the Final Analysis Memorandum.

In its September 19, 2005, reply to petitioner's ministerial error allegation, Eurodif/COGEMA claims that the Department's calculation of the additional R&D expense based on the unadjusted COM was a methodological choice, and therefore, is not a ministerial error. Respondent did not comment on petitioner's claim regarding the Department's inadvertent use of a weighted average for the R&D expense ratio.

**Department's Position:** It was the Department's methodological approach to calculate the additional R&D expenses based on COM, exclusive of the major input adjustment for electricity that Eurodif/COGEMA purchased from its affiliate. Therefore, this is not a ministerial error, as provided in section 351.224(f) of the Department's regulations. With regard to the R&D expense ratio calculation, the Final Analysis Memorandum inaccurately described our calculations as a simple average. However, as intended, the Department properly calculated the weighted-average rate for R&D by dividing the total R&D expense for five years by the total cost of goods sold for five years. Therefore, no change is necessary to the quantitative analysis. See Final Analysis Memorandum, at Attachment 2.

**Recommendation**

We recommend correcting only the error alleged by Eurodif/COGEMA for the amended final results of this review. If you agree with our recommendation, the changes in the final antidumping margin will be as follows:

<b>Exporter</b>	<b>Final Weighted-Average Margin Percentage</b>	<b>Amended Weighted-Average Margin Percentage</b>
Eurodif/COGEMA	12.62	9.75

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

\_\_\_\_\_  
Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date